REMARKS

Claims 1-6, 9-19, 22-24 and 26-29 are currently pending.

Interview Summary

The Examiner is thanked for conducting a personal Interview with applicant's undersigned representative on 20 February 2008. In the Interview, the representative and the Examiner were able to agree on a number of issues. These are discussed below in context with each asserted rejection.

Art Rejections - Bernardin

Claims 1, 2, 4, 7-9, 15, 16, 19-21 and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bernardin (USPN 5,009,650). Applicants respectfully traverse this rejection.

Representative claim 1 recites, *inter alia*, an absorbent article comprising:

(1) an acquisition layer and

(2) at least one first storage layer,

wherein said first storage layer comprises at least 50 percent by weight of a super absorbent material calculated on the total weight of the first storage layer, and

wherein the first storage layer lies between the acquisition layer and the liquid permeable upper surface.

The Examiner alleges that Bernardin teaches a similar absorbent article, as shown in Fig. 7:

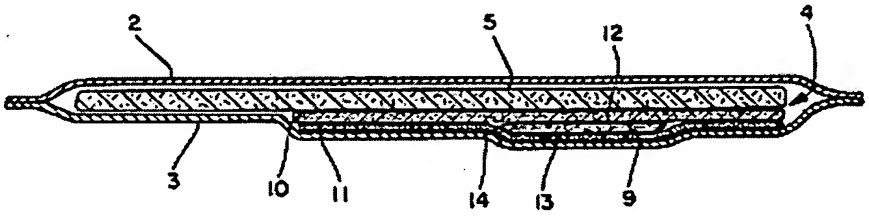

FIG. 7

- Layer 2 is a liquid permeable liner.
- Layer 5 is low density layer of cellulosic fibers that the Examiner alleges corresponds to the claimed acquisition layer.
- Layer 10 is a first higher density component that the Examiner alleges corresponds to the claimed first storage layer.

- Layer 11 is a second higher density component that the Examiner alleges corresponds to the second storage layer.
- Layer 9 is a superabsorbent material which is taught to be between layers 10 and 11 in order to obtain wicking across the entire length of the superabsorbent and contacts both the upper surface (12) and lower surface (13) of the superabsorbent material.

Applicants respectfully maintain that it is clear that Bernardin does not teach or suggest at least that:

(1) first storage layer comprises at least 50 percent by weight of a super absorbent material calculated on the total weight of the first storage layer; and

(2) the first storage layer lies between the acquisition layer and the liquid permeable upper surface.

The Examiner now agrees with both (1) and (2) - in the Interview Summary the Examiner states, "Applicant argued first that the superabsorbent of Bernardin is not within the first storage layer as claimed. Examiner agrees. Applicant also argues that there is no motivation to modify the article of Bernardin to obtain the claimed article because doing so would destroy the function of the article of Bernardin. Examiner agrees."

At least one reason discussed at the interview such that the Examiner agreed with applicants' position follows:

Bernardin does not teach or suggest each feature of the presently claimed invention, as set forth in representative claims 1 and 16. For example, Bernardin does not teach or suggest that a first storage layer contains superabsorbent material. Bernardin already teaches the addition of superabsorbent material as a separate layer from the first and second higher density components 10 and 11. Bernardin teaches that when superabsorbent is included in the Bernardin diaper, it is incorporated as a separate layer 9. See Figure 7. The superabsorbent layer 9 is placed between the first and second high density components 10, 11.

Bernardin specifically teaches away from including superabsorbent in the first high density component 10. See column 5, lines 8-29. In column 5, lines 8-29, Bernardin discloses that an important advantage of the Bernardin invention is to overcome a specific problem with wicking because of superabsorbent materials - "However, due to the swelling nature of the superabsorbent material 9, wicking in the plane of the fiber matrix bearing the superabsorbent 9 is severely hindered." Column 5, lines 13-16. To overcome this problem, Bernardin teaches that for the solution,

"wicking across the entire length of the superabsorbent material 9 is accomplished by sandwiching the superabsorbent material 9 between the first high density component 10 and the second high density component 11." Column 5, lines 17-21.

Further, Example IV of Bernardin shows that superabsorbent material being incorporated into a fluff layer stops the function of a diaper.[1] But, when the superabsorbent material is a separate layer below the fluff layer, the diaper works well.[2]

Thus, it is quite clear that Bernardin does not teach or suggest the presently claimed invention, and actually ***teaches away*** from the presently claimed invention. That is, Bernardin teaches away from a first storage layer comprising at least 50 percent by weight of a super absorbent material calculated on the total weight of the first storage layer. That is, the superabsorbent 9 is specifically taught to be a separate layer which is between the higher density components in order to obtain wicking across the entire length of the superabsorbent 9. See column 5, lines 16-24.

Accordingly, one skilled in the art would not be motivated to modify Bernardin in order to make a alleged first storage layer (first high density component 10) that includes superabsorbents. Bernardin specifically teaches away from such an arrangement.

And, Bernardin teaches away from a first storage layer lying between the acquisition layer and the liquid permeable upper surface.

In order to achieve its principle of operation, Bernardin teaches that the higher density layer 6 is below the lower density layer 5. See column 3, lines 50-68. Again, the Berardin teachings are related to proper wicking and flowback properties. Column 3, lines 50-68 recite that "The higher density layer 6 draws waste fluid from the lower density layer 5 in the target area 7 upwardly towards the edge 8 at the back of the diaper 1. Further, along upper regions 18 of the higher density layer 6 towards the upper edge 8 there is, surprisingly, substantial fluid transfer back from the higher density layer 6 to the lower density layer 5. It is important to note that although this flowback occurs from the higher density layer 6 to the lower density

[1] See column 12, lines 6-31 - "The superabsorbent was intermixed with the fine meltblown fibers ... the fluid wicks vertically 4.5 cms but then essentially stops, presumably because the swelling particles have restricted the fluid flow in the web by plugging the pores."

[2] See column 12, lines 32-51 - "When this same [superabsorbent] web was placed beneath a softwood fluff layer ... the effect of the fluff layer as a fluid distributor for the superabsorbent was apparent. ... Furthermore, ... the height wicked in the [layered] diaper would continue to increase, whereas wicking in the superabsorbent web alone would virtually stop."

layer 5, the lower density layer 5 only draws sufficient fluid to satisfy its unsaturated capillary forces proximate to the higher density layer 6, where there is an overlap in pore sizes such that the smallest pores in the lower density layer 5 are smaller than the largest pores in the higher density layer 6. The lower density layer 5 drains fluid from the higher density layer 6 but does not become soaked, with the advantage that the wearer's comfort is maintained while a significant proportion of the absorption capacity of the lower density layer 5 is utilized."

As clearly stated in the MPEP, "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious." MPEP § 2143.01(VI). Here, the Examiner's proposed modification is to switch the placement of lower density layer 5 and higher density layer 6 (or its equivalent in first high density component 10). This would change the entire principal of operation of Bernardin which relies upon the specific placement of the two layers in order to achieve proper "flowback" and maintain a wearer's comfort while utilizing a significant proportion of the absorption capacity of the lower density layer 5.

Thus, one skilled in the art would not make the proposed modification, as suggested by the Examiner.

Accordingly, Bernardin in view of Guidotti does not teach or suggest each feature of the presently claimed invention.

Claims 4 and 19

Claims 4 and 19 recite that at least one aperture or recess extends through an entire thickness of the first storage layer.

In the Interview Summary, the Examiner states that "Applicant further stated with respect to claim that Bernardin does not teach apertures or recesses that extend through the entire thickness. The Examiner will consider applicant's remarks regarding this matter when they are submitted and whether the arguments are persuasive."

Applicants respectfully assert that there is no aperture or recess that extends through an entire thickness of the first storage layer.

Applicants respectfully assert that the Office is taking an overly broad view of the claims in the most recent Official Action. The Office is limited to interpreting the claims as broadly as their terms ***reasonably*** allow. *In re American Academy of Science Tech Center*, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). Moreover, the Office is reminded that the claims do not stand alone but, rather, are part of a fully integrated written instrument consisting principally of a specification that concludes with the claims and, thus, ***must be read in view of the specification,*** of which they are part. *Philips v. AWH Corp.*, 75 USPQ2d 1321, 1327 (Fed. Cir. 2005).

A review of the specification elucidates that the claimed aperture or recess that extends through the entire thickness is essentially a hole through the first storage layer. Thus, it is clear from the specification, that a tiny pore of Bernardin does not and would not extend through a storage layer. It is ***unreasonable*** to suggest that the pores of Bernardin form a hole through a storage layer of Bernardin. It is ***unreasonable*** to suggest that one skilled in the art would think that the pores of Bernardin form a hole through a storage layer of Bernardin.

Applicants respectfully request this rejection be withdrawn.

Claim 9

Claim 9 depends from claim 8 and recites that the absorbent article comprises a liquid permeable top sheet, wherein the liquid permeable top sheet and the acquisition layer are thermally joined in a hollow space in the first storage layer created by said apertures or recesses.

In the Interview Summary, the Examiner states that "As to claim 9, applicant argues that Bernardin's teaching of a peripheral edge thermal connection of the acquisition layer to the topsheet and examiner's argument that an attachment between the edges is equivalent to a peripheral edge connection and thus obvious[ly] is not supported by Bernardin. Since claim 9 recites with sufficient structure that the thermal connection of the two layers must be at the recesses or apertures, examiner's argument is insufficient."

Applicants respectfully maintain that the Examiner's argument from the Official Action is insufficient.

The first storage layer lies between the acquisition layer and the liquid permeable top sheet. And, the acquisition layer must pass through/between the first storage layer in order to be joined to the liquid permeable top sheet.

Thus, because the acquisition layer must pass through/between the first storage layer in order to be joined to the liquid permeable top sheet it is quite a different connection than a peripheral edge connection.

This rejection is respectfully requested to be withdrawn.

Secondary References

The Office relies on certain secondary references to cure certain deficiencies of Bernardin. Applicants make no admissions regarding the propriety of the combinations, and simply assert that the secondary references do not and cannot cure the deficiencies of Bernardin. Because Bernardin teaches away from certain aspects the presently claimed invention and because a modification of Bernardin would result in a change in a principle of operation of Bernardin, the secondary references do not and cannot cure the deficiencies of Bernardin.

Conclusion

Favorable examination and further action in the form of a Notice of Allowance is earnestly solicited. If there are any questions concerning this paper or the application in general, the Examiner is invited to telephone the undersigned.

Respectfully submitted,
BUCHANAN INGERSOLL & ROONEY PC

Date: April 7, 2008

By: T.D.Boone
Travis D. Boone
Registration No. 52,635

P.O. Box 1404
Alexandria, VA 22313-1404
703 836 6620